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No. 97-463

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,
v.
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Do the federal courts have jurisdiction under Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185, to consider claims that a collective bargaining agreement is not enforceable because of a defect in the formation of the agreement such as fraud in the inducement?

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF FACTS

I. The Complaint

Respondent in this case is the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 787 (hereinafter "the UAW"). For many years, the UAW has had a collective bargaining relationship with "Textron Lycoming Reciprocating Engine Division, Avco Corporation," which is a wholly owned subsidiary of Textron Inc.[1]

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[1] This is the name of the employer as spelled out in the most recent collective bargaining agreement between the two parties. In deference to the footnote at p. ii. of the Petition, the Employer is herein referred to as AVCO/Textron.

Prior to beginning negotiations for the 1994-97 contract, the UAW submitted a detailed request to AVCO/Textron seeking information to prepare for the upcoming negotiations. (Pet. App. 2a-3a). One portion of the request concerned whether the Company had plans to subcontract the work currently being performed by UAW members at the plant. *Id.* This request included a demand for any written materials which the Company had prepared on the issue of subcontracting. When the parties commenced actual bargaining, the UAW specifically renewed its request that the Company disclose any plans it had to subcontract bargaining unit work. (Pet. App. 3a). In response to the request, the Vice-President for Human Resources said that he had no knowledge of such plans and promised to ascertain whether his knowledge was correct. (Pet. App. 3a). The UAW and AVCO/Textron concluded a collective bargaining agreement in March 1994, which was ratified by the membership at the beginning of April, 1994 (Pet. App. 3a).

While the Company was bargaining, it developed a plan to subcontract the parts production work at the plant. Despite the Union's repeated requests for information on this topic, and the Company's promise to provide information on any such plans, this plan was never disclosed to the Union during negotiations. (Pet. App. 3a). Full implementation of this plan will cause about half of the Union's membership to lose their jobs. (Pet. App. 3a). The plan was formally approved by the Company's Board of Directors shortly after the UAW members ratified the contract. It was announced to the Union membership approximately two months later. *Id.*

The UAW would have bargained far differently if the Company had been truthful in responding to the Union's repeated requests for information or if the Company had abided by its promise to provide information if it developed any plans to eliminate work from the facility by subcontracting. As a result of its reasonable reliance on the Company's misrepresentations and promises to provide additional information if it became available, the UAW did not raise the issue of subcontracting bargaining unit work during the rest of negotiations. It made no contract demands on the issue and did not further pursue its request for information.[2] (Pet. App. 3a). Instead, in reasonable reliance on the employer's representations during bargaining, the UAW and its members agreed to a labor contract —including a promise not to engage in a strike during the term of the contract.

II. The Proceedings Below

The Complaint sought a declaration that the collective bargaining agreement was voidable because AVCO/Textron made fraudulent misrepresentations during the negotiation of the collective bargaining agreement. The UAW sued under Section 301 of the Labor Management Relations, Act 29 U.S.C. Section 185, and the Third Circuit's prior decision in *Mack Trucks, Inc. v. Intern. Union, UAW*, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989). The court in *Mack Trucks* held that Section 301, which establishes jurisdiction over suits "for violation of" collective bargaining agreements, necessarily includes the authority to determine the existence of those agreements. Any other result, the court reasoned, would undermine the broad authority of the federal courts to develop a consistent body of law of federal common law for the enforcement of collective bargaining agreements.

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[2] While it is impossible to state for certain what would have happened had the Company disclosed its plans, it is safe to say that the Union would have made demands to protect the wages and incomes of its members subject to layoff. It is reasonable to predict that the Union would have achieved some of its goals in this respect because it would have had the power to threaten to strike in support of its demands. This weapon is much less potent during the term of the contract, where, as here, the contract contains a "no-strike" clause.

AVCO/Textron moved to dismiss for lack of subject matter jurisdiction. The Company argued that that Section 301 does not grant the federal courts jurisdiction in cases where the plaintiff does not assert a breach of the collective bargaining agreement. The District Court granted the Motion to Dismiss.

The Court of Appeals overturned the decision of the District Court. Relying on *Mack Trucks*, the court held that there is no legal or logical distinction based upon which party to a lawsuit asserted the defect in the formation of the contract. It concluded that the broad federal jurisdiction over the enforcement of labor contracts included claims that go to the formation of collective bargaining agreements because the resolution of the fraud issue was "integral to the question of whether the agreement is enforceable." (Pet. App. 12a). Having thus disposed with the jurisdictional issue raised by AVCO/Textron, the court remanded the case for further proceedings in order to determine whether, in fact, the contract was the product of fraudulent misrepresentations and, if so, what remedy would be appropriate.[3]

REASONS FOR DENYING THE WRIT

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, provides jurisdiction in the federal courts for all "[s]uits for violation of contracts between an employer and a labor organization." It is, of course, well set-

[3] The UAW has also pursued its remedies under the National Labor Relations Act. On April 30, 1996, several months after the filing of the complaint in this case, Region Four of the NLRB issued a complaint in Textron Lycoming, Case No. 4-CA-23285. The case was set for trial on April 17, 1997. Two weeks before trial, AVCO/Textron made an offer to unilaterally settle the case, which the UAW has opposed. As of this date, the UAW's objections to the proposed unilateral settlement are still before the Regional Director and Region Four has not accepted the proposed settlement. The ULP trial has been postponed pending the decision of the Region whether to accept the proposed settlement.

tled that this provision requires federal courts "to fashion a body of law for the enforcement of . . . collective bargaining agreements." *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 451 (1957). It is also beyond dispute that this body of law is to be fashioned in accordance with the "usual process of the law," including all of the "remedial proceedings, both legal and equitable, as might be appropriate in the circumstances, [including actions] under the Declaratory Judgments Act." *Id.* at 452-453, 456 (quoting H.R. Conf. Rep. No. 510, 80th Cong. 1st Sess., p. 42 and 93 Cong. Rec. 3656-3657).

It is also beyond dispute that this broad authority over contract matters overlaps with the jurisdiction that would otherwise lie exclusively with the National Labor Relations Board, which regulates many other aspects of the relationship between an employer and its employees. But, as Section 301 demonstrates, "[t]he strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976). See also, *William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 16 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Smith v. Evening News*, 371 U.S. 195, 197-98 (1962).

Finally, it is common ground that, when a party brings suit to enforce a labor contract under Section 301, the defending party may raise all of the defenses available under the "usual processes of the law" in connection with contract enforcement actions, such as a claim that the contract never came into existence. See, e.g., *I.B.E.W., Local 481 v. Sign-Craft Inc.*, 864 F.2d 499 (7th Cir. 1988); *Bd. of Trustees v. Universal Enterprises, Inc.*, 751 F.2d 1177 (11th Cir. 1985); *Trust v. Gilliam*, 737 F.2d 1501

(9th Cir. 1984); *United Steelworkers of Am., AFL-CIO, v. Rome Industries, Inc.*, 437 F.2d 881 (5th Cir. 1970); *Mogge v. District No. 8*, 387 F.2d 880, 882 (7th Cir. 1967). Based upon this precedent, many courts have allowed potential defendants to seek declaratory judgments regarding their contractual obligations. *Teamsters v. American Delivery*, 50 F.3d 770 (9th Cir. 1995); *Operating Engineers v. Wilson*, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1991); *Mack Trucks, Inc. v. Int'l Union UAW*, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989); *Rozay's Transfer v. Local Freight Drivers, L. 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989); *McNally Pittsburg, Inc. v. Intern. Iron Workers*, 812 F.2d 615 (10th Cir. 1987).

In *Kozera. v. Westchester-Fairfield Chapter*, 909 F.2d 48 (2nd Cir. 1990) for example, the Second Circuit noted that Section 301 provides federal district courts with jurisdiction over actions to enforce labor contracts and then reasoned as follows:

> It is axiomatic . . that to determine whether a breach of an agremeent has occurred, a court must necessarily determine whether a valid agreement exists in the first place. Ancillary to determining the merits of an action for breach of a collective bargaining agreement, therefore, is the power to declare a purported agreement either invalid or binding.

Kozera, supra, 909 F.2d at 52 (citing other cases listed above).

1. With that much as background, it is plain that the question presented here is a narrow one: given that a party to a contract enforcement action may defend on the ground of "fraud in the inducement," may a party initiate an action to rescind a contract on that same basis. With the decision below, three Circuits have now answered this

question in the affirmative. Not a single court has reached a contrary conclusion. *Teamsters v. American Delivery, supra*, 50 F.3d at 774. (A "claim for fraud in the inducement may be brought directly in federal courts under Section 301(a)"); *McNally Pittsburg, Inc. v. Intern. Iron Workers*, 812 F.2d 615 (10th Cir. 1987). *Accord: Operating Engineers v. Wilson*, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1992); *Rozay's Transfer v. Local Freight Drivers, L.208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989).

Thus, the Court of Appeals here properly noted that a party *defending* a contract enforcement action could certainly assert "fraud in the inducement" as a defense to such action. And, as the court below properly reasoned, nothing in the langauge or policy of Section 301 compels a different result when the party initiating the action claims that a contract should be rescinded for the same reason. (Pet. App. 10a-11a).

In fact, a holding to the contrary would lead to absurd results: parties seeking to challenge the validity of a contract would be forced to breach that contract, await a Section 301 action for contract enforcement by the other party, and then defend that action based on a "fraud in the inducement" theory. In the present case, for example, the UAW would have had to breach the contract by striking in violation of the no-strike clause in order to create a situation in which a district court could entertain its argument that the contract was induced by fraud. There is no reason to require such a result and, not surprisingly, not a single court has so held.

2. It should by now be clear that the "split in the circuits" cited by the Petitioner is much less than meets the eye. As noted above, no Court of Appeals holds that the federal courts lack jurisdiction when a party sued for breach of contract defends on the basis that the contract

was not properly formed. And not a single Court of Appeals has held that § 301 jurisdiction is lacking when an employer or a union seeks a declaration that a purported contract should be rescinded when that purported contract was obtained through fraud. On the narrow question presented here, then, there is simply no conflict in the lower court authority.

The cases cited by Petitioner from the First and Sixth Circuits evolved in situations much different than here and, as discussed below, are entirely beside the point.

In *Hernandez v. National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972), a group of employees sought to invalidate a collective bargaining agreement because—they claimed—it conflicted with the National Labor Relations Act since the union no longer represented the majority of the employees in the unit. In effect, they argued that their union was no longer properly their exclusive representative and that it therefore had no right to bind them to a contract. Such determinations of representative status, however, are within the exclusive jurisdiction of the NLRB. The refusal to entertain a suit under Section 301 raising such issues certainly has no bearing on whether Section 301 creates jurisdiction for garden-variety issues of contract formation such as claims of fraud in the inducement.[4]

Petitioner's reliance on *Heussner v. National Gypsum Company*, 887 F.2d 672 (6th Cir. 1989) fares no better. In *Heussner*, a group of employees asserted that the plant closing agreement negotiated by the union was invalid be-

[4] The Third Circuit has likewise rejected an attempt to invalidate a contract provision because it did not raise traditional contract formation issues but instead centered on claims within the exclusive competence of the National Labor Relations Board. *Beverly Enterprises—Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees*, 90 F.3d 95 (3rd Cir. 1996). The Third Circuit had no trouble harmonizing its holding in *Beverly Enterprises* with the decision at issue here.

cause it eliminated their rights under the *preceding* collective bargaining agreement. The court in *Heussner* rejected this claim. In effect, the court held the plaintiffs could not rely on a collective bargaining agreement that had been superseded to establish Section 301 jurisdiction. In doing so, the Sixth Circuit relied on the discussion in the *Mack Trucks* case of a similar line of Third Circuit cases which held that the federal courts had no jurisdiction under Section 301 to enforce contractual rights that arose either prior to or independently of the collective bargaining agreement. *Heussner, supra,* 887 F.2d at 676 & n. 2 (citing discussion in *Mack Trucks, supra,* 856 F.2d at 589.

The opinion below carefully reviewed and distinguished these kinds of cases, holding that Section 301 jurisdiction existed here because the complaint

> "alleges flaws in the basic formation of the collective bargaining agreement and its resolution is integral to the question of whether the agreement is enforceable." (Pet. App. 12a).

Thus, the holdings in *Heussner* and *Hernandez* are in no sense in conflict with the decision at issue here.[5]

[5] Petitioner's claim that the state of the law in the Seventh Circuit is "unclear" (Pet. 12) is somewhat puzzling given that the Seventh Circuit plainly stated in *IBEW v. Sign-Craft*, 864 F.2d 499, 502 (7th Cir. 1988), that Section 301 grants jurisdiction over "any dispute[] about the meaning or validity of collective bargaining agreements." Given that holding, it is hard to understand how Petitioner can argue that the Seventh Circuit would reach a different result in the present case. *See, Chicago Typographical Union No. 16 v. Chicago Sun Times*, 935 F.2d 1501, 1504 (7th Cir. 1991) (pointless to make federal jurisdiction turn on which party sued first, because other party could force a lawsuit by disregarding arbitration award).

Petitioner also claims that both the Tenth and First Circuits have "recognized" the purported conflict in the Circuits, and supports this claim with cites to *McNally* and *Hernandez*. (Pet. 8). In the passages cited in *McNally*, the Tenth Circuit makes reference

That leaves only the Fourth Circuit decision in *A.T. Massey Coal Co. v. Int'l Union*, 799 F.2d 142 (4th Cir. 1986). That decision held that Section 301 jurisdiction existed over the union's complaint to compel arbitration, but not over an employer's lawsuit for a declaration to the contrary. But, as in *Hernandez* and *Heussner*, the employer's efforts to be released from its obligations in *Massey* were premised—not on traditional doctrines of contract formation such as "fraud in the inducement"—but rather on doctrines developed under the National Labor Relations Act on the issue of when an employer could properly withdraw from a multi-employer bargaining association. Since complex questions of when, how, and under what circumstances an employer may withdraw from a multi-employer bargaining unit lie at the heart of labor law, it is not surprising that the court left those questions to the NLRB when it had jurisdiction over the arbitration claim by virtue of the union's parallel lawsuit. As with the decisions from the First and Sixth Circuits on which Textron here relies, the decision of the Fourth Circuit in

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to the now-overruled decision of the Seventh Circuit in *NDK Corp. v. Local 1550, UFCW*, 709 F.2d 491 (7th Cir. 1983), as well as decisions from the Third and Ninth Circuits. But, as discussed in text, the Ninth Circuit has now fully embraced the principle that Petitoner seeks to disturb, and it is the Third Circuit that rendered the decision below from which Petitioner now seeks relief. There is therefore absolutely no conflict between the decisions of the Third, Ninth, and Seventh Circuits on the question presented here. Moreover, as discussed in text, the decision in *Hernandez* was based on an entirely different argument: that the union no longer enjoyed the support of a majority of the employees.

Finally, Petitioner's reliance on the 30 year old decision from the Oregon Supreme Court, *Corvalis Sand & Gravel Co. v. Hoisting Portable Eng'rs*, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967) (Pet. 10), is entirely misplaced both since the decisions of state courts are not particularly informative as to the interpretation of federal law and because that decision was rendered without the benefit of the caselaw developments discussed in text, all of which are subsequent to that state court decision.

Massey simply does not address—let alone resolve—the question of whether Section 301 jurisdiction is present to determine garden-variety questions of contract formation such as those at issue here.[6]

3. As just described, the three cases on which Textron relies involved legal issues much different than that presented here. Any language in those cases which could be read as depriving courts of jurisdiction over Section 301 actions raising garden-variety issues of contract formation and enforcement is unnecessary to the holdings there and cannot form the basis of a conflict in the circuits.

To the extent that the dicta in those cases be read to foreclose actions such as that at issue here, however, we submit that such a result would be contrary to the well-settled authority that—under Section 301—contract disputes are to be resolved by the district court in accordance with the "usual processes of the law." Moreover, as described above, any result that would force a party seeking review of the circumstances surrounding contract formation to violate the contract plainly has little to recommend it.

In short, there is no conflict in the holdings of the lower courts on this issue and review by this Court is unnecessary.

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[6] The Fourth Circuit's decision is also inconsistent with other long standing precedent. See, *Bd. of Trustees v. Universal Enterprises, Inc.*, 751 F.2d 1177 (11th Cir. 1985) (court has jurisdiction to consider whether alter ego is bound by collective agreement); *El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. Gen. Contractors*, 376 F.2d 797 (5th Cir. 1987) (union could obtain declaratory judgment regarding legality of subcontracting clause under Section 301 without alleging "a violation of" labor contract); *Black-Clawson Co. v. Int'l Ass'n of Machinists Lodge 355*, 313 F.2d 179, 181 (2d Cir. 1962) (employer may use Section 301 to seek a declaration that a grievance is not arbitrable).

CONCLUSION

For the foregoing reasons, the Petition should be denied.

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